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TRUST REGULATION

THE SOLUTION

BY ALBERT FINK

III

As no disease can be successfully treated until properly diagnosed, no ailment to the body politic can be adequately dealt with before its cause and nature shall have been fully understood. To this end a brief examination of the causes of the present political unrest becomes necessary. It is believed that any analysis of the indictment against modern civilization, or, as the Socialists are pleased to call it, the "Capitalistic System," will result in a demonstration that the fundamental evil complained of is the unequal division of labor and its fruits. Said Adam Smith in his opening paragraph of *The Wealth of Nations*:

"The annual labor of every nation is the fund which originally supplies it with all the necessities and conveniences of life which it annually consumes and which consist always either in the immediate produce of that labor or in what is purchased with that produce from other nations."

The objection is not that the "necessaries and conveniences of life" purchased with the produce of the annual labor of the nation are inadequate to its legitimate consumption. On the contrary, it is commonly believed that the sum total of the prosperity of our people is equal to, if it does not exceed, that of any other. The complaint is that these necessities and conveniences are not equitably distributed, that under our industrial system the "Capitalistic Class" receive more and Labor less than each is legitimately entitled to expect, and inasmuch as the price of all commodities, labor included, is measured in money, the fundamental basis of complaint is that there is an unjust division of this commodity. Too much individual wealth, too much

poverty. That this is an evil very justly to be complained of no one may doubt. It is world old. That the equalization of property exercises an influence on political society was clearly understood even by some of the old legislators. Aristotle said:

"Poverty is the parent of revolution and crime. In the opinion of some, the regulation of property is the chief point of all, that being the question upon which all revolutions turn."

That the foregoing diagnosis, the unequal distribution of wealth, is the principal cause of the present unrest a moment's reflection will demonstrate. Government ownership of insurance is advocated to prevent the use of enormous accumulations of capital in the further acquisition of individual wealth. Government ownership of railroads, telegraph and telephone systems, State and municipal ownership of gas, water, power, and transportation are contended for not because it is believed that they can be administered more economically or efficiently (in fact, the contrary is frankly admitted), but solely because it is believed that by taking from the "Capitalistic Class" what are said to be the instrumentalities of the accumulation of wealth the result will be its more equal distribution. Though often veiled, the same underlying motive may be easily traced in almost every species of political agitation occurring during the last decade. "Capital too powerfully controls our courts," it is said; "it secures unjust decisions in its own favor." Hence the recall of judges. *The Class Privilege*, as it is called, "has seized upon all the machinery of our government; they control our conventions and prevent nomination of honest men." Hence the direct primaries. "So corrupt have become our legislatures through the malign influence of the power of money we can no longer secure just and wholesome laws." The initiative and referendum is the result. The objection to further combination has its tap root deep in the same soil. Few thoughtful people either believe or affirm that combinations, no matter how large, are *mala in se*. On the contrary, it is well known that they are not only useful, but essential requirements of modern civilization. If they could be more universally owned by the public at large there would be no legitimate objection. The opposition comes from the dread that by reason of exploitation through the tightening of their grip upon government, the trusts will further accelerate the acquisition of individual

wealth and its attendant poverty of the masses. Thus every attack upon existing conditions, as well as every suggested remedy, is predicted upon the dread of further concentration. Even the proposed Commodity Court, with power to fix maximum prices for trust-controlled commodities, has its origin in the feeling, at least on the part of some of its advocates, that further exploitations will thus be curtailed and the accumulation of private fortunes made less facile. If now the ultimate cause of the unrest is the concentration of wealth in the hands of individuals, what is the reason of this unequal distribution? Obviously no remedy for the disease can be intelligently suggested until its cause is understood.

The primary factor of the concentration of wealth which suggests itself to the thoughtful observer is the natural and inherent inequality of man. That man is and ought to be politically equal, free, and independent, no one will deny. That man is, in fact, equal either mentally, morally, or physically, no one will assert. By one of the inevitable laws of nature, inflexible in its operation, only the fittest survive. As in war, government, science, art, and the professions the ablest claim the highest prize, so in finance, commerce, and industry, where the ultimate goal is wealth, the greatest reward comes to him who is most fit. How can it be otherwise? If ability be unequal, must not he who is possessed of the greatest skill win in any game of life which the ingenuity of man may devise?

The factor, second in importance to the natural inequality of man, is the very foundation stone upon which our government is constructed—*individual liberty*. When this country first cast off its allegiance to Great Britain and became an independent member of the family of nations all that was thought necessary in government was *personal freedom*. Man had just come to realize that by natural law he was and ought to be free and independent. It is true that such a conception had in a desultory manner existed in the mother country since the days of Magna Charta, but its application had been spasmodic and confined more to the landed aristocracy and great barons than to the people at large. It was theoretic rather than actual. On the Continent it was unknown.

With this principle in mind the "Fathers" constructed a government whose ideal was individual liberty. If only

mankind could secure and retain that which it had never had—*personal freedom*—all would be well, it was thought. No longer were there to be castes. There was to be no aristocracy other than that of merit, no orders of nobility other than those of worth. Every man was to be free to rise just as high as his native talents would permit in any field he might choose to enter. What he might lawfully acquire was his to dispose of as he willed, nor was it to be taken from him except for some public purpose and then only upon just compensation. It was a noble conception nobly executed. Recognizing that the organic law they were framing might not prove in all respects adaptable and expedient to the purposes of the generations yet to come, a constitutional method was incorporated for its amendment. But individual freedom, the right to aspire, to climb to any summit, to hold, dispose of and acquire property without limit is but the rule of *unrestricted competition*. Unequal men, unrestricted competition for the necessities and conveniences of life; could there be but one result? It has often been said that the great inventions, improved transportation facilities, combinations, have been the great factors in the concentration of wealth, but this is not a correct statement of the case. That the great inventions have enormously increased the labor efficiency of the country, which translated into money means greater wealth for acquisition, may be admitted. Rapid and cheap transportation have made available additional markets and combinations have rendered attainable that which would otherwise have been impossible. But all these conditions have been at all times open to every one. *There has been equal opportunity for all*. So it is said that the banking system, the unlimited credits, the manipulation of the money of others, has been an important factor. Here, too, each has had equal opportunity, and if one was able to secure a greater credit and hire larger sums it was because he was able to inspire his fellow-man with greater confidence. These conditions have but widened the field of operation. They have been instruments equally available to all. The fundamental cause lies deeper—*unrestricted competition between unequal men*.

Paradoxical as it may seem, it is nevertheless true that the great industrial trusts and combinations of capital have fed and grown fat upon that which was designed to destroy them, the rule of free and unrestricted competition. Two

great competing carriers engaged in a death struggle for freight and passenger traffic, two or more individuals or corporations occupied in an effort to undersell, and thus secure the markets of a rival, present much more the appearance of contending armies bent on mutual extermination than gentle handmaids distributing the products of labor. In war, though one conquer and the other be vanquished, the net result is waste to both. Yet in the national Congress, the State legislatures, on the stump and from the press has been heard the cry: "Let competition be free and untrammelled! Whatever restricts competition restrains trade. Each is necessary to the onward march of civilization." The error is fatal and must of necessity result in the very conditions which are now deemed so objectionable. It was the relentless struggle between competing carriers to secure more than their just proportions of business which enabled the industrial corporations to impose upon the former that system of rebates which in turn enabled the latter to undersell all competitors in any given market and thus force them to abandon the field. So far from being one of the essentials, unrestricted competition is one of the great obstacles, in spite of which civilization yet moves on. As no rational human being would employ two engines to perform a function which could with equal efficiency and economy be obtained from one, so no one can successfully contend for any true economy in a system which encourages two or more groups of men to perform those labors which can with equal efficiency be performed by one. Wherever a surplus is found engaged in any field of industry over and above that required for economic production and distribution there is to that extent waste of human energy. Were this proposition not self-evident, no more convincing proof of its inherent truth would be needed than a casual comparison of the prosperity of the carriers to-day as compared with their condition prior to the time when a wholesome enforcement of the law by an Interstate Commerce Commission forbade discriminatory rates and rebates, thus rendering unnecessary those violent rate wars which proved so disastrous. In other words, the restriction of a theretofore unbridled competition.

It is not to be assumed that competition is without its place in economics, for, as pointed out in a previous article, it forms a very necessary balance-wheel to commerce, pre-

venting, as it does, any excessive or extortionate charge by monopoly and insuring a superior article at a minimum price. But it is the right to compete rather than the actual competition itself which preserves the desired equilibrium. So long as the former exists there is no cause for alarm at the absence of the latter. All that is necessary is to preserve the right itself intact; self-interest, the natural laws of trade, supply and demand, will do the rest. But though the right is thus useful by reason of its moral effect, it by no means follows that there must be legislative enactment for its actual employment. There is no sanction in the true science of economics for government command, "Still must you trample, crush, corrupt, and kill!" If, then, the cause of the political social unrest be the concentration and unequal distribution of the products of labor, *wealth*, and if this condition be the inevitable result of a free and unrestricted competition between unequal men or groups of men, *personal liberty*, what is the solution? As the primary cause, the natural inequality of man, can in no wise be remedied by legislation, we come at once to the consideration of the secondary factor—individual freedom—to acquire, hold, and dispose of property without limit and without restraint. Are the American people now prepared to curtail that personal freedom, individual liberty, which has been so eagerly sought after by the master minds of all ages and which heretofore has been so universally thought essential to the welfare and development of mankind? It would indeed seem a pity. The period of absolute personal individual freedom has as yet been of such short duration, by comparison with the long ages of servitude and oppression, that the mind revolts at an experiment so radical in its nature until every other possible solution has been tried and found unavailing.

If, however, the nation is now ready for this fundamental change, the remedy is simple. A constitutional amendment, for such it must be, authorizing a graduated and unlimited Income and Inheritance Tax, followed by Congressional legislation establishing a scale which will confiscate in its operation all incomes after they have reached a certain agreed-upon figure, will simply and surely accomplish the purpose, and limit the further acquisition of individual wealth beyond a certain definite standard. But surely there must be some middle ground, which, while preserving that

personal freedom and independence so much to be desired and conserving all the great stimulants and motives for individual initiative and effort, will nevertheless, by rendering concentration of wealth more difficult, sufficiently curb the centripetal forces of modern society. If these forces can but be stayed in their baneful operation there need be no particular concern for those colossal fortunes which have already been amassed. Rarely has the second generation held intact the acquisitions of the first, to say nothing of adding thereto, and in the absence of entailment the undesirable conditions of to-day will soon pass away in the ever-shifting sands of human industry. The purpose of the nation, then, should be the utmost conservation of human energy, to the end that in the world's competition the purchasing power of our own labor will reach its highest efficiency, thus creating a maximum surplus profit the more equal distribution of which is desired. *No more useless and unnecessary waste. Let us have no two men performing the labor of one.* The enactment of such laws as will render individual accumulation more difficult, though placing no prohibition or limit upon the reward of individual effort and initiative.

First and foremost, the further immigration of foreign labor should for a definite period be altogether prohibited. Not only have we at present all the foreign elements which the nation can conveniently assimilate with any degree of safety for the perpetuation of the American type and characteristics, but the continued influx bears too heavily upon our own labor and is one of the chief factors in preventing a more equitable adjustment of the differences between labor and capital. As our manufacturing industries have been built up by a protective tariff, so our labor, by prohibition of further immigration and the consequent limitation of the supply, should be given an opportunity for recuperation and readjustment, thus placing it in a position to exact a more equitable wage, shorter hours, and better working conditions. With a limitation of supply there will be a corresponding increase in demand. The attitude of our country in the past upon this important question, saying, as it has, to the afflicted and oppressed of all nations, "Here you may come and by your individual effort better your condition," has been a noble one, but in our effort to benefit mankind we must not jeopardize our own preservation, for

with the overthrow of popular government in America would vanish the last hope of the world.

Next in importance would seem to be an absolute and utter severance of "big business" from government. Though there has been a marked improvement in this respect in the last few years, there is ample room for more. Of this point the people of the United States have become most justly jealous and will brook no further interference with their will. To this end any use of corporate funds by their officers or trustees for political purposes should by law be made embezzlement. Individual campaign contributions should be limited in amount and published prior to the election to which they are devoted, any violation of the law being punished as a felony. Above all, tampering with or corruption of the administration of justice, the enactment of laws, or the granting of public franchises, should be more severely dealt with than at present. To this end the criminal procedure should be so amended as to prevent unnecessary delays. After the introduction of all its other evidence in chief, the prosecution should have the right to call the defendant to the stand for the purpose of cross-examination upon the whole case, and in this connection the right to compel the production of all papers and documents. The constitutional prohibitions against compelling one to bear witness against himself had its first origin in the inhibition of physical torture as a means of eliciting confessions. The reason for the rule having long since become obsolete, the rule itself has served all useful purposes and should be abandoned. The instances are rare indeed when an innocent man can be kept from taking the stand in his own behalf and society has no interest in protecting the guilty. The penalty for perjury should be largely increased. Eight-to-four verdicts in criminal cases should be sufficient to convict. Ample protection is given a defendant in the right of the court to grant new trials for any miscarriage of justice. An appeal should be allowed government upon all questions of law. The rule against a conviction based upon the uncorroborated testimony of an accomplice should be relaxed in cases where the latter has been neither given nor promised immunity. The parole system should be generally adopted and more liberally applied to first offenders who upon full confession indicate sincere repentance. In all criminal prosecutions the process of one State court should

run to all others for the purpose of compelling the attendance of witnesses.

Direct primaries and the short ballot are steps in the right direction. The executive and administrative officers of the State governments should be appointed by the Governor and confirmed by the State legislatures to the end that responsibility may be more definitely fixed. There is no objection in principle to a preferential presidential primary, though it would seem a useless cost and will tend probably more or less strongly to the disruption of parties. Nor is there any inherent objection to the direct election of United States Senators. The question was much debated in the convention that framed our Constitution, and opinion upon the whole was very evenly divided. With these changes in our present system and an already strong current of healthy public sentiment in the same direction, it is believed that the combination between "big business" and government so bitterly complained of will soon be a matter of history.

The State courts should be lifted to the same dignity now enjoyed by those of the nation. To this end the compensation of the judges should be increased to an extent sufficient to attract the ablest lawyers in the profession. The plan would prove economical in the end. The judges should be appointed by the Governor upon the nomination of the bar of their respective counties and confirmed by the legislature. They should hold office during good behavior and be subject to removal only upon impeachment for improper conduct. Their recall by popular will is violative of every principle of a republican form of government. They should be subject to retirement upon full pay by the Governor upon petition of a majority of the members of their respective bars when they have reached a prescribed age. The Supreme Court of the nation should have jurisdiction to review by *certiorari* any judgment of the Supreme Court of a State interpreting the Federal Constitution in like manner as it now reviews the judgments of the several Circuit Courts of Appeal.

Child labor in all its forms and phases should be strictly prohibited and the inhibition rigidly enforced. Women should be given the ballot. It is theirs by natural right and their further disfranchisement can be justified by no pretense. Their influence upon politics will be helpful. If

they do not desire it, they should nevertheless be compelled to assume their just proportion of the burdens of government. They will soon appreciate the wisdom of the policy. Their employment in the trades should be most jealously guarded and discouraged as far as compatible with their individual liberty. Their place is in the home, not the factory. Education should be compulsory and the laws in this respect strictly enforced. A child reared in ignorance is a menace to the community. And it is upon the ultimate education of the masses that the destiny of the nation depends. More liberal working-men's compensation acts should be passed and each industry compelled to bear the expenses of its accidents and casualties, in the form of an immediate indemnity to the employee and a continuing pension to him or his dependents. That a human being should be thrown upon the scrap-heap and his dependents left helpless as soon as he becomes injured and unfit for further service is intolerable, even though his death or injury be the result of his own inadvertent carelessness.

There should be a national as well as State graduated income and inheritance tax. This tax, while not confiscatory in its operation, should materially increase with the increase of income, to the end of not only raising a large revenue for public use, but enforcing upon every one a payment according to his real interest in government. If government permits man to acquire and hold property without limit, the recipients of this bounty should be willing to pay in an increased ratio according to the benefits derived. Those who are unwilling should be compelled. Such a tax would not only obviate the necessity of raising a revenue from tariff upon articles which are no longer in the need of protection, but would directly tend to the more equal distribution of wealth by relieving the poorer classes of a taxation they can ill afford and placing the burden where it justly belongs, upon those who have the largest interest at stake. The more a man receives, the more he should be willing to give, and as the tax would never absorb the entire income the incentive to individual initiative and effort would remain unimpaired. There will be no lack of opportunity for profitable and wise investment of the increased revenues resulting from such tax. The conservation of moisture and the consequent redemption of the great arid regions of the West, the reclamation of swamp and overflow lands, the

further improvement of rivers and harbors, the acquisition of telegraph and telephone systems, a more efficient navy and State militia, together with many other useful and necessary products, will easily absorb all the available revenues. So there should be established a system of national pensions in addition to those already paid survivors of our wars. Not only should every employee of government, who by reason of his age or ill health has lost his efficiency, be subject to retirement upon a livable pension, but every citizen of the country who has become old and decrepit and is no longer able to adequately care for himself, is a direct charge upon the nation and should be the recipient of its bounty. Such a system, in addition to the imperative demands of morality, decency, and justice, has the further advantage of directly tending in a most legitimate manner to the more equal distribution of wealth by taking from those who can well afford and giving to those who are in the sorest need.

Unpopular as the suggestion will no doubt prove, and notwithstanding the deep suspicion with which it will be viewed, nevertheless the Sherman Anti-Trust Act should be forthwith repealed. As pointed out, it is wrong in principle, unnecessary for the purpose for which it was invoked, and has brought about the very conditions which it was designed to hinder. It is without place in sound economics. Its net result is the waste of human energy, and by commanding the eternal warfare "of each against all" the inevitable consequences of its operative effect is to destroy that which it was calculated to conserve. In its place should be enacted such a Federal Incorporation Law as will compel not only all the great industrials, but also all others who are engaged in interstate commerce, to abandon their State charters and accept in lieu thereof those offered by the National Government. Space will not admit any detailed discussion of the separate provisions of this law. Suffice it here to say that two at least of its underlying principles should be a maximum amount of publicity as to all corporate manipulation, including the actual physical valuation of the property and assets back of securities and a complete and absolute prohibition under severe penalties of any ownership of the stock or security of other corporations. The ownership by one corporation of the stock control of another is wholly unnecessary for any of the legitimate purposes of commerce

and has conduced as much as, if not more than, any other one factor in corporate management, to the centralization and unequal distribution of power in the hands of individuals. The incalculable benefits which would be derived from such legislation will be readily observed.

Inasmuch as some of the foregoing suggestions are clearly without the present powers of the Federal Congress and the adoption of others would be attended with grave constitutional doubt, there should be assembled a convention under the Fifth Article of the Constitution for the purpose of proposing amendments. Since the adoption of our organic law, nearly a century and a quarter ago, there has been no such assembly. Such convention would no doubt be attended by the best and ablest that the nation can produce. If the same wise veil of secrecy as was adopted by the Fathers in the draft of the original instrument were thrown over its deliberations until its conclusions were reduced to final form, there can be little doubt that many able and wise suggestions would be made and adopted. In any event, the time has clearly arrived when the nation should again take counsel in the solemn deliberate and conservative manner pointed out by the Constitution itself.

Above all, there should be that spirit of toleration for the views of others and willingness for just compromise without which so little can ever be accomplished. Labor should ever remember that "He tires betimes who spurs too fast betimes," that great and permanent reforms are not the product of a day and often not even of a generation, that in any ultimate clash of force victory will not necessarily lie with a disorganized numerical majority, powerful as it may appear, and that the overthrow of the great principle of "equal opportunity for all" might in the end, as it has done in the past ages, bear most heavily upon the masses. Capital, on the other hand, or individual wealth, should remember that "Whom the gods wish to destroy they first make mad," that they have a large stake in a government which permits unlimited competition and acquisition between unequal men, and that conditions which produce such unbounded individual wealth in the midst of such squalor, poverty, and human misery in a land where the total products of labor are far beyond the required necessities and conveniences of life, are not only morally unjust, but *wholly intolerable*.

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